IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21575 of 2004

Between:

Sree Lakshmi Metal Industries&Constructions

Special Class Contractors, Specialist in Asphalt Roads

By Hot Mix Process, 12-13-23, Street No.5,

Tarnaka, Secunderabad,

rep its Managing Partner B.Venkat Reddy
S/o.Janga Reddy, aged 40 years, R/o.Hyderabad

..... PETITIONER

AND

1 The Commissionerate of Tenders,
B.R.K.R. Bhavan, Hyderabad.
2 The Chief Engineer (R&B).
Erramanzil, Hyderabad.
3 The Superintending Engineer (R&B) Headquarters Circle,
Erramanzil, Hyderabad.
4 M/s.Raamkey Infrastructures Ltd, rep. by its Authorised

Representative Mr.S.ChakradharS/o.S.P.Reddanna
R/o.Gulmohar Avenue, Rajbhavan Road,
Somajiguda, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ in the nature of Writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring the action of Respondent Nos.1 to 3 in seeking to

award the work of "Development of new internal roads, footpaths, parking area, landscaping and providing M.S.Grill etc. in the premises of A.P.Secretariat, Hyderabad" to the fourth respondent, pursuant to the Tender Notice dt.7.10.2004 in NIT No.TA7/AEE9/14828/04/Traffic on the file of the third respondent, as illegal, arbitrary, without jurisdiction and discriminatory.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR ROADS & BUILDINGS

Counsel for the Respondent No.4: MR V.VENKATARAMANA

The Court made the following:

ORDER:

Challenging the action of the respondents 1 to 3 in seeking to award the work of development of new internal roads, footpaths, parking area, landscaping and providing M.S.Grill etc. in the premises of A.P.Secretariat, Hyderabad to the 4th respondent pursuant to the tender notice dated 07.10.2004 in NIT No.TA7/AEE9/14828/04/Traffic on the file of the 3rd respondent, the present writ petition is filed.

The 3rd respondent issued a tender notice dated 07.10.2004 calling for tenders with regard to development of new internal roads, footpaths, parking area, landscaping and providing M.S.Grill etc. in the premises of A.P.Secretariat, Hyderabad. The petitioner Firm, the 4th respondent and some others submitted tenders. The petitioner furnished all the required certificates. But a doubt was entertained with regard to the eligibility under electrical experience and a clarification was sought for from Superintending Engineer. Even before the clarification could be received, the 3rd respondent has opened the price bid of the 4th respondent and forwarded the same to the 1st respondent. Aggrieved by the same, the petitioner has filed

a writ petition No.20378 of 2004, which was allowed. In the Writ Appeal No.1819 of 2004 the order of the learned single Judge was set aside. The grievance of the petitioner is that the earnest money deposit furnished by the 4th respondent is not in consonance with the tender notice, therefore, his tender has to be rejected. Hence, the action of the respondents 1 to 3 in seeking to favourably finalise the defective tender of the

4th respondent is illegal. Several other contentions have been raised in the writ petition, but for the purpose of adjudication of the *lis* they are not relevant.

The 3rd respondent filed counter-affidavit stating that the validity of the demand draft was in force up to 28.03.2005, which is beyond specified tender validity period. The successful tenderer will be asked to submit bank guarantee for the entire amount of earnest money deposit at the time of concluding agreement, which shall be valid for the period of completion of work plus two years defect liability period as per the tender conditions. The petitioner was disqualified at the technical bid stage itself and hence opening of his price bid did not arise. Hence he prays to dismiss the writ petition.

The 4th respondent also filed a detailed counter-affidavit stating that the contention of the petitioner that the demand draft furnished by the 4th respondent is falling short of 8 days of the period of six months is totally misconceived and untenable, and the writ petition is found at ulterior motives. A demand draft is normally valid for six months, but it can be validated for further period by intimation to the banker. Hence he prays to dismiss the writ petition.

The learned counsel appearing for the petitioner vehemently contended that the earnest money deposit given by the 4th respondent by way of demand draft is contrary to the tender notification, therefore, he prays to cancel the tender notice dated 07.10.2004 with a consequential prayer to re-notify the tender.

On the other hand, the learned Government Pleader appearing for

the respondents 1 to 3 contended that the tender of the 4th respondent has not been accepted, therefore, the writ petition is premature. He further contended that one percent of the estimated tender work has to be given towards earnest money deposit and again the highest bidder has to give the guarantee not only earnest money deposit but also at the rate of 1-1/2% at the time of agreement. The acceptance of the tender of the 4th respondent is completely in accordance with the requirements of the tender notification, and therefore, the prayer sought for in the writ petition cannot be allowed. Hence he prays to dismiss the writ petition.

The learned counsel appearing for the 4th respondent contended that the demand draft that was given towards earnest money deposit is for unlimited period, therefore, it cannot be said to be contrary to the tender notification and that contract was awarded to the 4th respondent, and that no
mala fides were attributed against the officers. Hence he prays to dismiss the writ petition.

The short point for consideration is whether the earnest money deposit amount submitted by the 4th respondent by way of demand draft is contrary to one of the conditions of the tender notification.

The tender notification was issued on 07.10.2004. It is not in dispute that prior to this notification, for the same work, earlier notification was issued, but the same was cancelled on 07.09.2004. For the purpose of participating in the tender, the petitioner has taken the demand draft on 29.09.2004 and the same was submitted when the 3rd respondent called for the tender notification dated 07.10.2004. One of the conditions in the tender notification is:

> "EMD in the shape of Bank guarantee in the standard format or DD for Rs.2,31,600/- issued by any Nationalised Bank/schedule bank in favour of APAO Projects, Hyderabad to be valid for 6 months from the date of NIT."

Placing heavy reliance on this clause, the learned counsel for the

petitioner contended that the 4th respondent has submitted a demand draft dated 27.09.2004, and therefore, the tender of the 4th respondent cannot be accepted as contrary to one of the conditions specified in the tender notification. In so far as the question of invalidating the tender of the petitioner in the technical bid has become final.

The petitioner admittedly filed a writ petition No.20378/2004 where under the learned single Judge of this Court directed the 4th respondent in the writ petition to examine the letter dated 26.10.2004 received from the Superintending Engineer (Electrical) CPWD. The said order of the learned single Judge dated 19.11.2004 was set aside in Writ Appeal No.1819/2004 dismissing the writ petition. So, the disqualification of the petitioner in the technical bid has attained finality. Now the grievance of the petitioner in this writ petition is only with regard to the submission of earnest money deposit by the 4th respondent is contrary to the tender notification.

A copy of the demand draft submitted by the

4th respondent towards earnest money deposit is also placed in the writ petition. It is dated 27.09.2004. As seen from this document, it does not indicate any period of validity. No provision or any rule brought to the notice of this Court that validity of a demand draft is only for six months from the date of issue. Therefore, under no stretch of imagination, it can be said that the demand draft as submitted by the 4th respondent is said to be valid for six months from the date of its issue. In the absence of anything contrary in the demand draft, it cannot be held that its validity is only six months. The clause on which the learned counsel for the petitioner placed strong reliance, in my considered opinion, it would apply in case of bank guarantee where the bank has to furnish the date of its validity. In case a demand draft is given giving its validity for a period of six months, then only this clause will come into play. The demand draft as submitted by the 4th respondent does not contain any prescribed time with regard to its validity. So in my considered opinion that the

demand draft as submitted by the 4th respondent is not contrary to the conditions specified in the tender notification.

The learned counsel for the 4th respondent relied on a decision reported in ***Union of India vs. M/s.Laxmi Builders*** wherein it was held:

> "The Court in exercise of its judicial review jurisdiction is concerned with decision-making process, but not with the decision itself. This Court in appropriate cases may issue writs directing the State, its Corporations, instrumentalities and agencies to adhere to the norms, standards and procedures laid down by them and prevent them from departing from those norms arbitrarily. The Court, of course, would interfere if the decision is found vitiated by *mala fides,* unreasonableness and arbitrariness."

The leaned counsel for the 4th respondent also relied upon a decision reported in ***K.S.V.Raja vs. Union of India and others*** wherein it was held:

> "It is now well settled that the exercise of contractual powers by the State is amenable to the power of judicial review under Article 226 of the Constitution of India. It is also well settled that while exercising contractual powers, the State must adhere to the principles of equality and ensure that fairness is meted out to all the participants in the tender process. If the action of the tendering authority is illegal or arbitrary, either in accepting or rejecting the tender, it can always be corrected by this Court. While subjecting the decision of the tendering authority to judicial scrutiny, the two important factors cannot be ignored. These are (i) when the offers are evaluated by Committee of Experts with special knowledge, the decision plays an important role and the price offered is only one of the criteria; (ii) if the accepting authority or tendering authority has understood the conditions of the tender in proper perspective and has applied the same equally to all the tenderers in fair and transparent manner even if there is possibility of second opinion, the Court should not interfere in the matter."

The scope of judicial review in tender matters has been considered by the Apex Court in ***Tata Cellular vs.Union of India***. After considering the entire case law, the Apex Court held that the Court has to confine itself to the question of legality and its concern should be (i) whether the decision making authority exceeded its powers, (ii) committed an error of law, (iii) committed a breach of the rules of

natural justice, (iv) reached a decision which no reasonable Tribunal would have reached, or (v) abused its powers.

None of the above conditions will be applicable to the facts of the case. No doubt the petitioner as well as 4th respondent are bound by the conditions in the tender notification and the bid conditions ought to have been complied with scrupulously, otherwise giving scope for discrimination, arbitrariness and favourtism, which are totally abused to rule of law. In this case, no arbitrariness is attributed to respondents 1 to 3, so also no discrimination in accepting the tender in favour of the 4th respondent has been pointed out. So also it is not the case of the favourtism to the 4th respondent contrary to the conditions in the tender notification. So in pursuance of these aspects, the prayer in the writ petition cannot be accepted.

Since the tender of the 4th respondent is under consideration of the 1st respondent, in anticipation that the tender of the 4th respondent may be accepted by the 1st respondent, it cannot be said that there is violation of any right of the petitioner so as to grant in anticipation directions because the prayer in the writ petition itself to declare the action of the respondents 1 to 3 in seeking to award of the work in pursuance of the tender notification dated 07.10.2004 to the 4th respondent as illegal.

Viewed from any angle, the tender notification dated 07.10.2004 in NIT No.TA7/AEE9/14828/04/Traffic cannot be said to be illegal and arbitrary. This writ petition is totally misconceived and is liable to be dismissed.

The Writ Petition is, accordingly, dismissed. No order as to costs.

Dated: 10.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Commissionerate of Tenders,

BRKR Bhavan, Hyderabad

2. The Chief Engineer (R.&.B),

Erramanzil, Hyderabad

3. The Superintending Engineer (R.&.B)

Head Quarters Circle, Erramanzil, Hyderabad

4. Two CCs to the Government Pleader

for Roads & Buildings, High Court Premises,

Hyderabad (OUT)

5. Two CD copies.